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**Via email:** [tom.howard@waterboards.ca.gov](mailto:tom.howard@waterboards.ca.gov)

Mr. Tom Howard  
Executive Director  
State Water Resources Control Board  
1001 I Street  
Sacramento, California 95814

**RE: DWR and BOR Defective “Water Fix” Petition for Change Application**

Dear Mr. Howard:

The City of Antioch has reviewed the recently submitted joint petition for a change of Point of Diversion (Wat. Code, § 1701) and of Rediversion (Cal. Code Regs., tit. 23, § 791, subd. (e)) by the California Department of Water Resources (“DWR”) and U.S. Bureau of Reclamation (“BOR”). The petition for change (“Petition”) relates to Alternative 4a of the State’s “California Water Fix” project.

The City believes the Petition is defective and incomplete as follows:

1. The Petition fails to provide sufficient information necessary to identify potentially impacted water users and the specific impacts to those users in the detail required by law. Water Code section 1701 et seq; 23 CCR 794 (a)(7),(9). This information is also almost completely absent from the Draft Recirculated Environmental Impact Report (“DREIR”) referenced in the Petition. In place of specific analysis of impacts to the literally hundreds of potentially impacted water rights, the Petition (and the DREIR) rely on broad statements promising to operate and divert in such a way as to meet applicable law. This is simply insufficient under the law for a change petition and especially for such a project that will so fundamentally modify the present methods and location of diversion.

With respect to Antioch specifically, the DREIR (referenced in the Petition) *does* identify Antioch's diversion and examine some potential water quality impacts to the City's water rights in a "general sense" based on certain modeling predictions. However, the analysis is flawed because among other things: a) the DREIR incorrectly concludes that the City only infrequently diverts water under the City's pre-1914 water rights due to existing high salinity; and b) The DREIR incorrectly assumes that the City's primary water source is from San Joaquin Water flows. In fact, the City is able to divert on average 208 days a year, and the Sacramento River is the primary source of water diverted pursuant to the City's water rights, as Sacramento River flow, the largest source of flow to the Delta, arrives to Antioch's intake via tidal action and flow through Three-Mile and Georgiana Sloughs. Other water rights downstream of the Project are almost entirely ignored.

2. The timing of the Petition violates the National Environmental Policy Act ("NEPA") and the California Environmental Quality Act ("CEQA") because it is predetermining the outcome of the ongoing environmental review process by seeking permits for only one alternative (NEPA) and making a determination as to a specific alternative before the public has had an opportunity to comment on the DREIR (CEQA). At a minimum, the Applicants should be required to demonstrate that the Petition will not prejudice consideration of public comments on the DREIR or project alternatives.
3. The Petition incorrectly provides that the applicants presently own the proposed points of diversion/diversion.
4. The Petition references additional studies regarding the operation and design of the project that are as yet uncompleted (see pg. 14 of the Supplemental Information attachment). Because these studies will "inform design and operation of the diversion structures," we conclude that the proposed Project and the DREIR are currently incomplete. The fact that the details of design and operation are currently unknown also indicates that the Petition may be incomplete, as all the potential impacts of the project to water users and to fish and wildlife are unknown at this time.
5. The Applicants have not modeled the preferred alternative. The modeling performed by the Applicants is for a different alternative (Alternative 4, rather

than Alternative 4a). The Applicants have not updated to model the current project, and there are significant differences (e.g., amount of tidal restoration, salinity compliance points, etc.) between the model runs and the preferred alternative. Neither the Petition nor the RDEIR provide adequate detail as to how the applicants will operate the project. Project operations are proposed to be determined during an “adaptive management” process, but they have not described how this will work, or within what bounds. The Applicants underestimate the impacts of the preferred alternative because they continue to use the incorrect baseline condition, which the City and others have previously pointed out to the Applicants. Therefore, relying on the present modeling to demonstrate a “no harm/no injury” project impact is insufficient to meet the standards required to proceed with the Change Petition.

Based on the foregoing, Antioch respectfully requests that the SWRCB reject the current Change Petition. We also request that the SWRCB delay consideration of any petition until the Record of Decision is approved to avoid further predetermination regarding the project.

;Sincerely,

*Matthew Emrick*

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Matthew Emrick, Attorney at Law  
Special Counsel for the City of Antioch

cc: Steve Duran, City Manager  
Mayor, City of Antioch  
City Council Members, City of Antioch  
City Attorney, City of Antioch